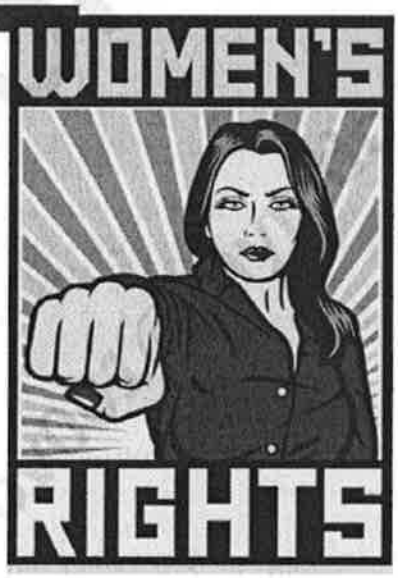
CHAPTER 6

WOMEN'S RIGHTS ARE HUMAN RIGHTS

After reading this chapter, you will be able to:

- **6.1** Discuss the systematic unequal treatment of women through history.
- **6.2** Critically analyze the Utilitarian arguments for women's rights.
- **6.3** Discuss the struggle for women's rights in the United States and its relation to reproductive rights.
- **6.4** Explain Simone de Beauvoir's existentialist defense of equality for women.



6.1 AN UNEQUAL FOOTING

Women are not a minority, but they have been treated as second-class persons by virtually every society in the history of humanity. The ethical problems attached to that fact are not new, but their being in the news at all in the 21st century should be a cause for moral introspection as well as political concern. According to the most recent U.S. Census Bureau statistics, American women working full time in 2012 earned on average 77 cents for every dollar men earned. The figures

are still grimmer for minority women: African-American women made 64 cents and Hispanic women made 54 cents for every dollar earned by a white male.

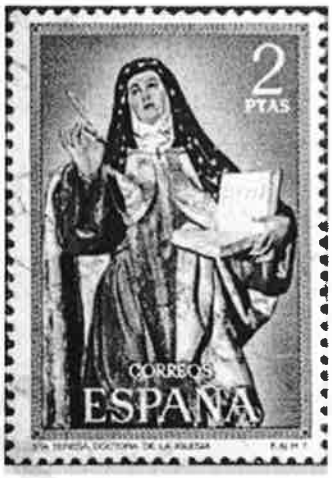
> *"Of all the evils for which man has made himself responsible, none is so degrading, so shocking or so brutal as his abuse of the better half of humanity: the female sex."*
>
> Mahatma Gandhi

The promise of the **1963 Equal Pay Act** has not been fulfilled, and more recent attempts at closing the paycheck gap have faltered. The **Equal Rights Amendment (ERA)** infamously failed to pass all states in the 1970s, and attempts at a bill guaranteeing equal pay for equal jobs were defeated for the third time in the U.S. Congress in 2014. The gap in the paycheck is because of the fact that men work harder and are "more motivated by money than women are," explained U.S. Representative Will Infantine.

He was not alone. Phyllis Schlafly, a prominent opponent of the ERA, came out fighting again against women's equality in 2014 to explain that the solution should not be to give women equal pay but rather to pay them even less so that they'll do better at finding a husband.

> *"Women typically choose a mate (husband or boyfriend) who earns more than she does. Men don't have the same preference for a higher-earning mate. While women prefer to HAVE a higher-earning partner, men generally prefer to BE the higher-earning partner in a relationship. This simple but profound difference between the sexes has powerful consequences for the so-called pay gap. Suppose the pay gap between men and women were magically eliminated. If that happened, simple arithmetic suggests that half of women would be unable to find what they regard as a suitable mate. The best way to improve economic prospects for women is to improve job prospects for the men in their lives, even if that means increasing the so-called pay gap."*
>
> Phyllis Schlafly

From Plato and Aristotle, right through an embarrassing number of contemporary intellectuals, women often have been treated as inferior to men. The cause of women's rights began, not exactly in a confrontational manner, in the Renaissance in both the New World and the Old. The Mexican poet and nun **Sor Juana Inés de la Cruz**, in her wry, incisive "Poet's Answer," argued for equal rights with a subtlety and wit that still sound fresh. The great Castilian poet and mystic **St. Teresa of Jesus**, while remaining sheltered among her Carmelite sisters in Avila most of her life, managed to outwit the Spanish Inquisition, reform what became the language of Cervantes, and hold her own as a philosopher and theologian. Particularly in her masterpieces *Interior Castle* and *The Road to Perfection* as well as in her spiritual autobiography *Libro de la Vida*, Teresa's oeuvre was a call to freedom, a challenge for men and women alike and as equals to reach the greatness of human possibilities. She was declared a Doctor of the Church in 1970 and today is considered the patron saint of Spanish writers.



SPAIN - CIRCA 1971: stamp printed by Spain, shows portrait of St Teresa of Avila, circa 1971.

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> *"My own sex, I hope, will excuse me, if I treat them like rational creatures, instead of flattering their* fascinating *graces, and viewing them as if they were in a state of perpetual childhood, unable to stand alone."*
>
> Mary Wollstonecraft

6.2 THE UTILITARIAN ARGUMENT: EQUALITY BENEFITS EVERYONE

A first wave of feminism, as it has been called, began in earnest in the late 18th century with **Mary Wollstonecraft's** pioneering *A Vindication of the Rights of Women*—a plea for the education of women—and turned into a fully developed utilitarian argument in the 19th century with **Harriet Taylor Mill's** *The Enfranchisement of Women* (1851) and her husband **John Stuart Mill's** *The Subjection of Women* (1869) and *On Liberty* (1869).

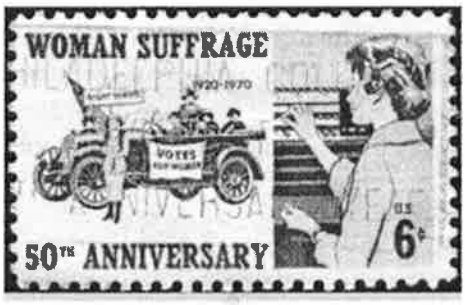
> ***"What marriage may be in the case of two persons of cultivated faculties, identical in opinions and purposes, between whom there exists that best kind of equality, similarity of powers and reciprocal superiority in them—so that each can enjoy the luxury of looking up to the other, and can have alternately the pleasure of leading and of being led in the path of development—I will not attempt to describe. To those who can conceive it, there is no need; to those who cannot, it would appear the dream of an enthusiast. But I maintain, with the profoundest conviction, that this, and this only, is the ideal of marriage; and that all opinions, customs, and institutions which favor any other notion of it, or turn the conceptions and aspirations connected with it into any other direction, by whatever pretenses they may be colored, are relics of primitive barbarism."***
>
> John Stuart Mill

MORAL PHILOSOPHERS: HARRIET TAYLOR MILL (1807–1858)

Harriet Taylor was an advocate for women's equality throughout her life. She was born Harriet Hardy in October 1807 in Walworth, South London. She was the daughter of a surgeon and educated at home. In 1826, she married John Taylor, a merchant and businessman. The couple had three children.

In the 1830s she met her eventual husband, the philosopher John Stuart Mill, when she was still married to John Taylor. Later that decade she "separated" from her husband John Taylor (as the two lived separate homes), but she remained married to him until his death in 1849. Two years later in 1851, Mill and Harriet Taylor were married. Taylor was an accomplished author and wrote *The Enfranchisement of Women* (1851), which served as the basis for Mill's long essay *The Subjection of Women*. Taylor took a harder stand on many of the issues discussed in Mill's work and gave a voice to the oppression of women in the 19th century. The couple collaborated on other works. John Stuart Mill's book *The Principles of Political Economy* (1848) has a chapter attributed to Harriet called "On the Probable Future of the Labouring Classes" in which she argues for the importance of education for all in the future of the nation, both economically and socially.

According to both Taylor Mill and Mill, giving women the same rights and protections under the law as men would have the consequence of increasing the happiness of society as a whole. Banishing what Mill called "the despotic relationship of husband to wife" and promoting an equal partnership in marriage also would benefit both men and women. The Utilitarian arguments here were as simple as they were ahead of their time: Giving women equal education and equal opportunities, including the right to vote, would not take away any of those rights and opportunities from men; it would only mean that more people had the same opportunities and the same rights. In other words, women's equality would increase happiness without creating any comparable unhappiness. "The social subordination of women," wrote Mill, "stands out an isolated fact in modern social institutions, a solitary breach of what has become their fundamental law."



USA - CIRCA 1970: Postage stamp printed in USA, dedicated to the 50th anniversary of the 19th Amendment, which gave women the vote, shows Suffragettes, 1920 and Woman Voter, 1970, circa 1970.
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6.3 FEMINISM: AMERICAN STYLE

The promise of equality, for women as for many minorities, often remains a dream deferred. The far-reaching promise **1964 Civil Rights Act** took and is taking still some time to reach the rights of women. The **National Organization for Women (NOW)**, founded in 1964, advocated the enforcement of Title IV of the Civil Rights Act as applied to women, arguing, among other things, for maternity leave rights in employment and in Social Security benefits, equal job training, and the right of women to control their own productive lives. In a historic 1968 Bill of Rights, the NOW set forth a list of demands for women's rights, many of which ought to be granted under the authority of both the 1964 Civil Rights Act and the U.S. Constitution's guarantee of equal protection under the law. Regrettably,

many of these demands remain unmet. The Equal Rights Amendment was never ratified. According to the 2012 U.S. Census Bureau, women working full time earned an average of 77 cents for every dollar men earned. A proposed Paycheck Fairness Act was blocked by U.S. Senate Republicans on April 8, 2014.

The Utilitarian argument again has proved to be persuasive and legally useful. In the United States, the U.S. Supreme Court's landmark 1973 **Roe v Wade** decision that made abortion legal was decided on a Utilitarian argument for privacy: The fetus is not a person until after three months of pregnancy, so up to that time there is only one person affected by the decision to have an abortion—the woman deciding to have it or not. It was and remains a privacy issue, a woman's choice.

Attempts to recriminalize abortion in the 21st century have given new impetus to the fight for women's equality, with the feminist poet and philosopher **Katha Pollitt (1949-)** the feminist philosopher **Katha Pollitt,** a popular columnist for *The Nation* magazine, leading the charge in her book *PRO: Reclaiming Abortion Rights* (2015). Abortion, writes Pollitt, "is an essential option for women—not just ones in dramatic, terrible, body-and-soul-destroying situations, but all women—and thus benefits society as a whole." Bringing abortion out of the closet and reclaiming it as a public social good, Pollitt reminds us that abortion was not banned in the Bible, nor by the American Founding Fathers, or even by the Catholic church until the late 19th Century. With impressive moral clarity, Pollitt attacks, among other things, the hypocrisy of lawmakers who oppose abortion and she points out "the inverse relationship between support for restrictions and support for programs that help low-income pregnant women, babies, and children." Indeed, despite the fact that the Supreme Court has already established the primacy of a woman's rights over any presumed rights of a fetus, several states including Texas, Kansas, Arizona, Arkansas, Oklahoma, South Carolina, and Missouri are among the states attempting to limit or take away a woman's choice by claiming a "Right to Life," while withdrawing support, food stamps, and health care from actual living children.

WHERE OPPOSING SIDES MIGHT AGREE?

Half of the pregnancies in the United States today are unwanted, many of them accidental or decidedly unplanned. Although a woman's right to choose is the law of the land, abortion remains a controversial topic. Many people, usually for religious reasons, are opposed not only to abortion but also to family planning, including such things as birth control or the morning-after pill.

Whether or not you support a woman's right to choose, can you argue for or against the desirability of access to education and family planning that might lead to not needing to choose in the first place?

6.4 THE MORALITY OF ABORTION IN AMERICA: *ROE V. WADE* (1973)

A woman's right to a legal abortion was established in the historic Roe v. Wade decision the U.S. Supreme Court reached on January 22, 1973. The original case was a challenge to Texas' restrictive abortion laws, which at the time were similar in other states. "Jane Roe" was the fictitious name given to the plaintiff in the court papers, to protect the privacy of this unmarried Texan who wanted to end her pregnancy legally and safely. Henry Wade was the Dallas County district attorney who was enforcing the Texas abortion laws when he was named as a defendant representing the state of Texas in the case.

The Roe v. Wade decision effectively rendered unconstitutional every other restrictive abortion law in the United States. With that decision, abortion became a woman's choice, a question between the woman in question and her doctor, a matter of privacy. The Supreme Court ruled 7-2 in

favor of the plaintiff. Lead by Justice Harry A. Blackmun, justices Warren Burger, William O. Douglas, Potter Stewart, William Brennan, Thurgood Marshall, and Lewis F. Powell, Jr. sided with the majority. Justices William H. Rehnquist and Byron White dissented.

The Court decided that the cases hinged upon two fundamental questions. The competing interests of the mother's health and that of protecting potentiality of human life. Although there was debate among the justices as to which framework to employ—either trimesters or viability—the court decided to employ a trimester framework for its ruling. The practical legal questions on the table included whether or not laws that criminalized abortion violate the U.S. Constitution, and whether or not the due process clause of the Fourteenth Amendment protect the right to privacy, including the right to choose to have an abortion.

"This right of privacy" wrote Justice Blackmun, "whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

NEW YORK CITY - NOVEMBER 28 2015: activists with Stop Mass Incarceration Network & Stop Patriarchy Org rallied in Union Square to support Planned Parenthood in wake of the Colorado Springs shooting.
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The Court stated that during the first trimester, the decision to abort must be left to the woman and her doctor. The State has the right to intervene prior to fetal viability only to protect the health of the mother, and may regulate the procedure after viability so long as there is always an exception for preserving maternal health. In the second trimester the state could stop an abortion only to protect the mother's life, and in the third trimester states could limit and regulate abortions so long as the mother's life and health were not placed in jeopardy. The Court additionally asserted the physician's right to practice medicine freely absent a compelling state interest.

Some opponents of a woman's right to choose to have an abortion still claim that particular moral circumstances dictate the ethics of abortion. Such circumstances include saving a woman's life, when the mother has been raped, or when the fetus is terminally ill or has an insurmountable birth defect. The argument that abortion is wrong except in the case of rape falls apart on closer inspection. An abortion will not "un-rape" the woman in question (although some may say that her lack of consent may justify it). And if abortion is indeed murder, as some religious fundamentalists claim, then how can the murder of any child be justified just so the pregnant woman will feel better? In other words, the argument exposes, at best, the insincerity of the claim that a fetus is a person.

The impact of the Roe v. Wade decision is and remains considerable, and its historical-philosophical context is fascinating.

> ***A woman's body is not the government's business.***
> ***That is the meaning of the Roe v. Wade decision.***

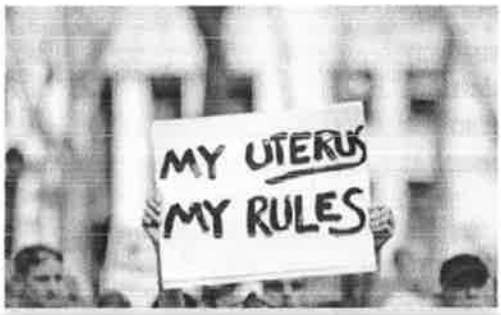
Religious objections, from theological dogmas the life begins at conception to actual terrorist acts such as the bombing of abortion clinics, have a checkered historical background. Aristotle, the main philosophical influence on Christian theology since the Middle Ages, himself believed that human development went through the three stages of vegetable soul, animal soul, and finally human soul, that is, a person capable of reasoning.

St. Thomas Aquinas, a doctor of the church, followed Aristotle in this and did not believe that life began at conception.

With breathtaking misogyny, Aquinas set ensoulment at forty days for males and eighty days for females. A prohibition of abortion before ensoulment (what today is often referred to as chronological "quickening" in the second trimester of a pregnancy) was suggested by Pope Innocent XI in 1679 in his attack on the Jesuits' more liberal views. That life begins at conception became dogma for Catholics—and afterward for many fundamentalist Christians—as recently as 1869, when Pius IX declared abortion a mortal sin on pain of excommunication at any stage of the pregnancy.

The Aristotelian concept of ensoulment, as well as its scientific counterpart in quickening, has been interpreted in different ways by the various major Abrahamic religions. Orthodox, Reform, and Conservative Jews do not agree on the time of ensoulment or indeed on the morality of abortion. Christians other than Catholics hold a broad spectrum of views on

the morality of abortion. Islam does not traditionally insist ensoulment occurs at the point of conception. Holy scriptures are of little help in establishing when life begins. When life begins, what makes a person a person—these are metaphysical questions, not moral questions.



NEW YORK CITY - SEPTEMBER 29 2015: Activists and directors of Planned Parenthood, NYC, gathered in Foley Square with NYC first lady Chirlane McCray.
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When or whether a microscopic ovum fertilized by a sperm cell, an eight-cell blastocyst, a zygote, an embryo, or your cousin Fred becomes a person all are metaphysical questions. The Supreme Court steered clear of these. "We need not resolve the difficult question of when life begins," wrote Justice Blackmun in his majority opinion. "When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate." Those speculations indeed continue to this day.

Both Chief Justice John G. Roberts. and Justice Samuel A. Alito have gone on record saying that they believe Roe v. Wade was decided the wrong way and should be overturned. That possibility became conceivable following the election of Donald Trump to the U.S. presidency 2016 brought out the back in the political spotlight, the president-elect having stated that women who get abortions "should be punished." A woman's right to choose may well depend on how well it can be defended.

What the court in 1973, however, remains stunningly clear and simple in terms of moral philosophy: it is a straightforward classical utilitarian argument. What are the consequences of an abortion? The end of a pregnancy. Do these consequences bring about happiness and eliminate unhappiness, or its opposite? That depends entirely on the pregnant woman in question. Is anyone else affected directly in the same way? No. Therefore, the right to choose is a matter of privacy. A woman's body is not the government's business. That is the meaning of the Roe v. Wade decision.

6.5 FEMINISM IS A HUMANISM: SIMONE DE BEAUVOIR

In the 20th century, a second wave of feminism is most closely identified with **Simone de Beauvoir's** 1949 explosive manifesto *The Second Sex*, which had a defining influence not only on other European philosophers but also on the burgeoning American feminist movement. Betty Friedan, one of the founders of the NOW, as well as Germaine Greer, Gloria Steinem, and many others were inspired by Beauvoir's deceptively simple claim that "No one is born a woman, one must learn to become one."

Making full use of her existentialist philosophical armor, Beauvoir pointed out the bad faith involved in treating women as an "other," in pretending that women are but mere objects. There is no such thing as human nature for the existentialists, and that applies to men and women equally. Human beings are defined by freedom itself, always in opposition to the being that is the world. We are not things. Developing her partner Jean-Paul Sartre's phenomenological ontology from the 1942 *Being and Nothingness* and applying it to the condition of women, Beauvoir pointed out that a woman becomes a woman by being taught that role and internalizing it, by pretending herself to be that role.

To pretend that others are things, to pretend you are a thing—these are all examples of bad faith and inauthenticity. In other words, both you and the oppressors, women and men, know better. Anticipating structuralism and the concept of our creating structures that we allow to become endowed with power over us, Beauvoir set the path for both political action and phenomenological investigation. That investigation continues, taking interesting turns. There have been claims that women are in fact not equal but rather different and better than men and that they have a privileged epistemology. These issues fall outside the scope of this discussion of ethics. Claims that women care more—something called "Ethics of Care" in the late 20th century—fall within Aristotle's ethics of virtue by stressing neither the act nor its consequences but rather the moral agent, in this case women. Still, asking "What makes a good woman?" is not much different than asking "What makes a good man?" There are differences, yes. But it is not evident that these differences are morally significant.

READINGS: HARRIET TAYLOR MILL: THE ENFRANCHISEMENT OF WOMEN

In this selection from her visionary feminist treatise, Harriet Taylor Mill proposes a classic Utilitarian argument why the consequences of women's equality would be beneficial not only to women but to men and to society as a whole.

Women have as good a claim as men have, in point of personal right, to the suffrage, or to a place in the jury box it would be difficult for anyone to deny. It cannot certainly be denied by the United States of America, as a people or as a community. Their democratic institutions rest on the inherent right of everyone to have a voice in the government. Their Declaration of Independence, framed by the men who are still their great constitutional authorities [declares that] "We hold these truths to be self-evident… that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

We do not imagine that any American will evade the force of these expressions by the dishonest or ignorant subterfuge that "men" in this memorable document, does not stand for human beings, but for one sex only; that "life, liberty, and the pursuit of happiness," are "inalienable rights" of only one moiety of the human species; and that "the governed," whose consent is affirmed to be the only source of just power, are meant for that half of mankind only, who in relation to the other, have hitherto assumed the character of governors. The contradiction between principle and practice cannot be explained away. A like dereliction of the fundamental maxims of their political creed has been committed by the Americans in the flagrant instance of the African Americans: of this they are learning to recognize the turpitude.

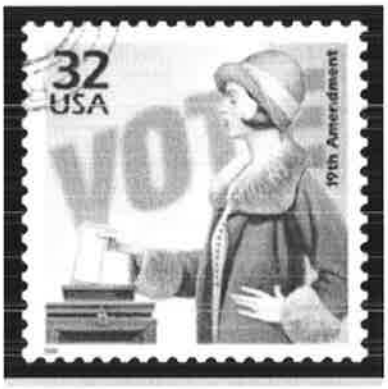
It was fitting that the men whose names will remain associated with the extirpation, from the democratic soil of America, of the aristocracy of color, should be among the originators, for America and for the rest of the world, of the first collective protest against the aristocracy of sex; a distinction as accidental as that of color, and fully as irrelevant to all questions of government. Not only to the democracy of America, the claim of women to civil and political equality makes an irresistible appeal, but also

From *Westminster Review*, July 1851 by Harriet Taylor Mill.

to those Radicals and Chartists in the British Islands, and democrats on the Continent, who claim what is called universal suffrage as an inherent right, unjustly and oppressively withheld from them. For with what truth or rationality could the suffrage be termed universal, while half the human species remain excluded from it? To declare that a voice in the government is the right of all, and demand it for only for a part- the part, namely, to which the claimant himself belongs is to renounce even the appearance of principle...

...Apart from maxims of detail, which represent local and national rather than universal ideas, it is an acknowledged dictate of justice to make no degrading distinctions without necessity. In all things, the presumption ought to be on the side of equality. A reason must be given why anything should be permitted to one person, and interdicted to another. But where that which is intercedes includes nearly everything which those to whom it is permitted most prize, and to be deprived of which they feel to be most insulting. When not only political liberty, but personal freedom of action, is the prerogative of a caste; when, even in the exercise of industry, almost all employments which task the higher faculties in an important field, which lead to distinction, riches, or even pecuniary independence, are fenced round as the exclusive domain of the predominant section, scarcely any doors being left open to the dependent class, except such as all who can enter elsewhere disdainfully pass by; the miserable expediencies which are advanced as excuses for so grossly partial a dispensation would not be sufficient, even if they were real, to render it other than a flagrant injustice: while, far from being expedient, we are firmly convinced that the division of mankind into two castes, one born to rule over the other is in this case, as in all cases, an unqualified mischief; a source of perversion and demoralization both to the favored class and to those at whose expense they are favored; producing none of the good which it is the custom to ascribe to it, and forming a bar, almost insuperable while it lasts, to any really vital improvement, either in the character or in the social condition of the human race.

These propositions it is now our purpose to maintain. But, before entering on them, we would endeavor to dispel the preliminary objections, which, in the minds of persons to whom the subject is new, are apt to prevent a real and conscientious examination of it. The chief of these obstacles is that most formidable one, custom. Women never have had equal rights with men. The claim in their behalf, of the common rights of mankind, is looked upon as barred by universal practice. This strongest of prejudices,



London, UK, March 22, 2012 - Vintage 1998 United States of America canceled postage stamp commemorating 50 years of the women's suffrage movement.
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the prejudice against what is new and unknown, has indeed, in an age of changes like the present, lost much of its force: if it had not, there would be little hope of prevailing against it. Over three-fourths of the habitable world, even at this day, the answer, "it has always been so," closes all discussion. But it is the boast of modern Europeans and of their American kindred, that they know and do many things which their forefathers neither knew nor did: and it is perhaps the most unquestionable point of superiority in the present above former ages, that habit is not now the tyrant it formerly was over opinions and modes of action, and that the worship of custom is a declining idolatry. An uncustomary thought, on a subject which touches the greater interests of life, still startles when first presented; but, if it can be kept before the mind until the impression of strangeness wears off, it obtains a hearing, and as rational a consideration as the intellect of the hearer is accustomed to bestow on any other subject.

In the present case, the prejudice of custom is doubtless on the unjust side. Great thinkers indeed, at different times, from Plato to Condorcet, besides some of the most eminent names of the present age, have made emphatic protests in favor of the equality of women. And there have been voluntary societies, religious or secular, of which the Society of Friends is most known, by whom that principle was recognized. But there has been no political community or nation in which, by law and usage, women have not been in a state of political and civil inferiority. In the ancient world the same fact was alleged, with equal truth, in behalf of slavery. It might have been alleged in favor of the mitigated form of slavery, serfdom, all through the Middle Ages. It was urged against freedom of industry, freedom of conscience, freedom of the press: none of these liberties were thought compatible with a well ordered state, until they had proved their possibility by actually existing as facts.

That an institution or a practice is customary is no presumption of its goodness, when any other sufficient cause can be assigned for its existence.

There is no difficulty in understanding why the subjection of women has been a custom. No other explanation is needed than physical force.

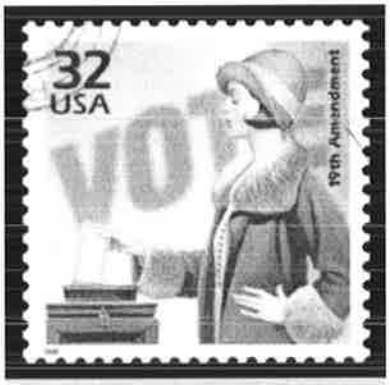
That those who were physically weaker should have been made legally inferior is quite conformable to the mode in which the world has been governed. The world is very young, and has but just begun to cast off injustice.

It is only now getting rid of monarchical despotism. It is only now getting rid of hereditary feudal nobility. It is only now getting rid of disabilities on the grounds of religion. It is only beginning to treat any men as citizens, except the rich, and a favored portion of the middle class. Can we wonder that it has not yet done as much for women? As society was constituted until the last few generations, inequality was its very basis; association grounded on equal rights scarcely existed; to be equals was to be enemies; two persons could hardly cooperate in anything, or meet in any amicable relation, without the law's appointing that one of them should be the superior of the other.

> ***"Let every occupation be open to all, without favor or discouragement to any, and employments will fall into the hands of those men or women who are found by experience to be most capable of worthily exercising them."***
>
> Harriet Taylor Mill

When a prejudice which has any hold on the feelings finds itself reduced to the unpleasant necessity of assigning reasons, it thinks it has done enough when it has re-asserted the very point in dispute in phrases which appeal to the pre-existing feeling. Thus many persons think they have sufficiently justified the restrictions on women's field of action, when they say that the pursuits from which women are excluded are unfeminine; and that the proper sphere of women is not politics or publicity, but private and domestic life.

We deny the right of any portion of the species to decide for another portion, or any individual for another individual, what is and what is not their "proper sphere." The proper sphere for all human beings is the largest and highest which they are able to attain to. What this is cannot be ascertained without complete liberty of choice. The speakers at the Convention in America have therefore done wisely and right in refusing to entertain the question of the peculiar aptitudes either of women or of men, or the limits within which this or that occupation may be supposed to be more



London, UK, March 22, 2012 - Vintage 1998 United States of America canceled postage stamp commemorating 50 years of the women's suffrage movement.
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the prejudice against what is new and unknown, has indeed, in an age of changes like the present, lost much of its force: if it had not, there would be little hope of prevailing against it. Over three-fourths of the habitable world, even at this day, the answer, "it has always been so," closes all discussion. But it is the boast of modern Europeans and of their American kindred, that they know and do many things which their forefathers neither knew nor did: and it is perhaps the most unquestionable point of superiority in the present above former ages, that habit is not now the tyrant it formerly was over opinions and modes of action, and that the worship of custom is a declining idolatry. An uncustomary thought, on a subject which touches the greater interests of life, still startles when first presented; but, if it can be kept before the mind until the impression of strangeness wears off, it obtains a hearing, and as rational a consideration as the intellect of the hearer is accustomed to bestow on any other subject.

In the present case, the prejudice of custom is doubtless on the unjust side. Great thinkers indeed, at different times, from Plato to Condorcet, besides some of the most eminent names of the present age, have made emphatic protests in favor of the equality of women. And there have been voluntary societies, religious or secular, of which the Society of Friends is most known, by whom that principle was recognized. But there has been no political community or nation in which, by law and usage, women have not been in a state of political and civil inferiority. In the ancient world the same fact was alleged, with equal truth, in behalf of slavery. It might have been alleged in favor of the mitigated form of slavery, serfdom, all through the Middle Ages. It was urged against freedom of industry, freedom of conscience, freedom of the press: none of these liberties were thought compatible with a well ordered state, until they had proved their possibility by actually existing as facts.

That an institution or a practice is customary is no presumption of its goodness, when any other sufficient cause can be assigned for its existence.

adapted to the one or the other. They justly maintain, that these questions can only be satisfactorily answered by perfect freedom.

> ***"Concerning the fitness, then, of women for politics, there can be no question; but the dispute is more likely to turn upon the fitness of politics for women."***
> Harriet Taylor Mill

Let every occupation be open to all, without favor or discouragement to any, and employments will fall into the hands of those men or women who are found by experience to be most capable of worthily exercising them. There need be no fear that women will take out of the hands of men any occupation which men perform better than they. Each individual will prove his or her capacities in the only way in which capacities can be proved, by trial, and the world will have the benefit of the best faculties of all its inhabitants. But to interfere beforehand by an arbitrary limit, and declare that whatever be the genius, talent, energy, or force of mind, of an individual of a certain sex or class, those faculties shall not be exerted, or shall be exerted only in some few of the many modes in which others are permitted to use theirs, is not only an injustice to the individual, and a detriment to society, which loses what it can ill spare, but is also the most effectual way of providing that, in the sex or class so fettered, the qualities which are not permitted to be exercised shall not exist.

Concerning the fitness, then, of women for politics, there can be no question; but the dispute is more likely to turn upon the fitness of politics for women. When the reasons alleged for excluding women from active life in all its higher departments are stripped of their garb of declamatory phrases, and reduced to the simple expression of a meaning, they seem to be mainly three: first, the incompatibility of active life with maternity, and with the cares of a household; secondly, its alleged hardening effect on the character; and thirdly, the inexpediency of making an addition to the already excessive pressure of competition in every kind of professional or lucrative employment. The first, the maternity argument, is usually laid most stress upon; although (it needs hardly be said) this reason, if it be one, can apply only to mothers. It is neither necessary nor just to make imperative on women, that they shall be either mothers or nothing; or that, if they have been mothers once, they shall be nothing else during the whole remainder of their lives. Neither women nor men need any law to exclude them from an occupation if they have undertaken another which is incompatible with it. No one proposes to exclude the male sex from

Parliament because a man may be a soldier or sailor in active service, or a merchant whose business requires all his time and energies.

Nine-tenths of the occupations of men exclude them de facto from public life as effectually as if they were excluded by law; but that is no reason for making laws to exclude even the nine-tenths, much less the remaining tenth. The reason of the case is the same for women as for men. There is no need to make provision by law, that woman shall not carry on the active details of a household, or of the education of children, and at the same time practice a profession or be elected to Parliament. Where incompatibility is real, it will take care of itself; but there is gross injustice in making the incompatibility a pretense for the exclusion of those in whose case it does not exist: and these, if they were free to choose, would be a very large proportion...

... Let us consider what is the amount of this evil consequence? What is the compensation for it? The worst ever asserted, much worse than is at all likely to be realized, is, that, if women competed with men, a man and a woman could not together earn more than is now earned by the man alone. Let us make this supposition, the most unfavorable supposition possible: the joint income of the two would be the same as before; while the woman would be raised from the position of a servant to that of a partner. Even if every woman, as matters now stand, had a claim on some man for support, how infinitely preferable is it that part of the income should be of the woman's earning, even if the aggregate sum were but little increased by it, rather than that she should be compelled to stand aside in order that men may be the sole earners, and sole dispensers of what is earned! Even under the present laws respecting the property of women, a woman who contributes materially to the support of the family cannot be treated in the same contemptuously tyrannical manner as one who, however she may toil as a domestic drudge, is a dependent on the man for subsistence.... All who have attained the age of self-government have an equal claim to be permitted to sell whatever kind of useful labor they are capable of, for the price which it will bring...

...Custom hardens human beings to any kind of degradation, by deadening the part of their nature which would resist it. And the case of a woman is, in this respect, even a peculiar one; for no other inferior caste that we have heard of have been taught to regard their degradation as their honor. The argument, however, implies a secret consciousness that the alleged preference of women for their dependent state is merely apparent and arises from their being allowed no choice; for, if the preference be natural,

there can be no necessity for enforcing it by law. To make laws compelling people to follow their inclination has not hitherto been thought necessary by any legislator. The plea, that women do not desire any change, is the same that has been urged, times out of mind, against the proposal of abolishing any social evil, "There is no complaint" which is generally not true; and, when true, only so because there is not that hope of success, without which complaint seldom makes itself audible to unwilling ears. How does the objector know that women do not desire equality and freedom? He never knew a woman who did not, or would not, desire it for herself individually. It would be very simple to suppose, that, if they do desire it, they will say so. Their position is like that of the tenants or laborers who vote against their own political interests to please their landlords or employers; with the unique addition, that submission is inculcated on them from childhood, as the peculiar attraction and grace of their character. They are taught to think that to repel actively even an admitted injury done to themselves is somewhat unfeminine, and had better be left to some male friend or protector. To be accused of rebelling against anything which admits of being called an "ordinance of society," they are taught to regard as an imputation of serious offense, to say the least, against the proprieties of their sex. It requires unusual moral courage as well as disinterestedness in a woman to express opinions favorable to woman's enfranchisement, until at least there is some prospect of obtaining it. The comfort of her individual life, and her social consideration, usually depend on the goodwill of those who hold the undue power; and, to possessors of power, any complaint, however bitter, of the misuse of it, is a less flagrant act of insubordination than to protest against the power itself...

...Successful literary women are just as unlikely to prefer the cause of women to their own special consideration. They depend on men's opinion for their literary as well as for their feminine successes; and such is their bad opinion of men, that they believe there is not more than one in ten thousand who does not dislike and fear strength, sincerity, or high spirit, in a woman. They are therefore anxious to earn pardon and toleration for whatever of these qualities their writings may exhibit on other subjects, by a studied display of submission on this, that they may give no occasion for vulgar men to say (what nothing will prevent vulgar men from saying) that learning makes women unfeminine, and that literary ladies are likely to be bad wives.

But enough of this; especially as the fact which affords the occasion for this notice makes it impossible any longer to assert the universal acquiescence

of women (saving individual exceptions) in their dependent condition. In the United States at least, there are women, seemingly numerous, and now organized for action on the public mind, who demand equality in the fullest acceptation of the word, and demand it by a straightforward appeal to men's sense of justice, not plead for it with timid depreciation of their displeasure.

Women's equality day
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Like other popular movements, however, this may be seriously retarded by the blunders of its adherents. Tried by the ordinary standard of public meetings, the speeches at the Convention are remarkable for the preponderance of the rational over the declamatory element: but there are some exceptions; and things to which it is impossible to attach any rational meaning have found their way into the resolutions. Thus the resolution which sets forth the claims made in behalf of women, after claiming equality in education, in industrial pursuits, and in political rights, enumerates, as a fourth head of demand, something under the name of "social and spiritual union," and "a medium of expressing the highest moral and spiritual views of justice," with other similar verbiage, serving only to mar the simplicity and rationality of the other demands; resembling those who would weakly attempt to combine nominal equality between men and women with enforced distinctions in their privileges and functions.

What is wanted for women is equal rights, equal admissions to all social privileges; not a position apart, a sort of sentimental priesthood. To this, the only just and rational principle, both the resolutions and the speeches, for the most part, adhere. They contain so little which is akin to the nonsensical paragraph in question, that we suspect it not to be the work of the same hands as most of the other resolutions. The strength of the cause lies in the support of those who are influenced by reason and principle; and to attempt to recommend it by sentimentalities, absurd in reason, and inconsistent with the principle on which the movement is founded, is to place a good cause on a level with a bad one. Here are indications that the example of America will be followed on this side of the Atlantic; and the first step has been taken in that part of England where every serious movement in

the direction of political progress has its commencement- the manufacturing districts of the North.

READINGS: JUDITH JARVIS THOMSON: A DEFENSE OF ABORTION

In this essay, Judith Jarvis Thomson (b.1929) is willing to concede the main points of abortion opponents including the following: that life begins at conception, that the fetus has rights, and that the fetus is an innocent being. Nevertheless given its rights and innocence, she argues that the rights of the mother outweigh the rights of the fetus. Consequently, it is morally permissible for the mother to have an abortion in nearly all cases.

Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception. The premise is argued for, but, as I think, not well. Take, for example, the most common argument. We are asked to notice that the development of a human being from conception through birth into childhood is continuous; then it is said that to draw a line, to choose a point in this development and say "before this point the thing is not a person, after this point it is a person" is to make an arbitrary choice, a choice for which in the nature of things no good reason can be given. It is concluded that the fetus is. or anyway that we had better say it is, a person from the moment of conception. But this conclusion does not follow. Similar things might be said about the development of an acorn into an oak trees, and it does not follow that acorns are oak trees, or that we had better say they are. Arguments of this form are sometimes called "slippery slope arguments"—the phrase is perhaps self-explanatory—and it is dismaying that opponents of abortion rely on them so heavily and uncritically.

> ***"A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree."***
> Judith Jarvis Thomson

I am inclined to agree, however, that the prospects for "drawing a line" in the development of the fetus look dim. I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first

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learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and less, fingers and toes; it has internal organs, and brain activity is detectable. On the other hand, I think that the premise is false, that the fetus is not a person from the moment of conception. A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree. But I shall not discuss any of this. For it seems to me to be of great interest to ask what happens if, for the sake of argument, we allow the premise. How, precisely, are we supposed to get from there to the conclusion that abortion is morally impermissible? Opponents of abortion commonly spend most of their time establishing that the fetus is a person, and hardly anytime explaining the step from there to the impermissibility of abortion. Perhaps they think the step too simple and obvious to require much comment. Or perhaps instead they are simply being economical in argument. Many of those who defend abortion rely on the premise that the fetus is not a person, but only a bit of tissue that will become a person at birth; and why pay out more arguments than you have to? Whatever the explanation, I suggest that the step they take is neither easy nor obvious, that it calls for closer examination than it is commonly given, and that when we do give it this closer examination we shall feel inclined to reject it.

I propose, then, that we grant that the fetus is a person from the moment of conception. How does the argument go from here? Something like this, I take it. Every person has a right to life. So the fetus has a right to life. No doubt the mother has a right to decide what shall happen in and to her body; everyone would grant that. But surely a person's right to life is stronger and more stringent than the mother's right to decide what happens in and to her body, and so outweighs it. So the fetus may not be killed; an abortion may not be performed.

It sounds plausible. But now let me ask you to imagine this. You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist is now plugged into you.

To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you have to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says. "Tough luck. I agree. but now you've got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago.

In this case, of course, you were kidnapped, you didn't volunteer for the operation that plugged the violinist into your kidneys. Can those who oppose abortion on the ground I mentioned make an exception for a pregnancy due to rape? Certainly. They can say that persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who came into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are a product of a rape. And in fact the people who oppose abortion on the ground I mentioned do not make this distinction, and hence do not make an exception in case of rape.

Nor do they make an exception for a case in which the mother has to spend the nine months of her pregnancy in bed. They would agree that would be a great pity, and hard on the mother; but all the same, all persons have a right to life, the fetus is a person, and so on. I suspect, in fact, that they would not make an exception for a case in which, miraculously enough, the pregnancy went on for nine years, or even the rest of the mother's life.

Some won't even make an exception for a case in which continuation of the pregnancy is likely to shorten the mother's life, they regard abortion as impermissible even to save the mother's life. Such cases are nowadays very rare, and many opponents of abortion do not accept this extreme view. All

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the same, it is a good place to begin: a number of points of interest come out in respect to it.

1.

Let us call the view that abortion is impermissible even to save the mother's life "the extreme view." I want to suggest first that it does not issue from the argument I mentioned earlier without the addition of some fairly powerful premises. Suppose a woman has become pregnant, and now learns that she has a cardiac condition such that she will die if she carries the baby to term. What may be done for her? The fetus, being to life, but as the mother is a person too, so has she a right to life. Presumably they have an equal right to life. How is it supposed to come out that an abortion may not be performed? If mother and child have an equal right to life, shouldn't we perhaps flip a coin? Or should we add to the mother's right to life her right to decide what happens in and to her body, which everybody seems to be ready to grant—the sum of her rights now outweighing the fetus's right to life?

The most familiar argument here is the following. We are told that performing the abortion would he directly killings the child, whereas doing nothing would not be killing the mother, but only letting her die. Moreover, in killing the child, one would be killing an innocent person, for the child has committed no crime, and is not aiming at his mother's death. And then there are a variety of ways in which this might be continued. (1) But as directly killing an innocent person is always and absolutely impermissible, an abortion may not be performed. Or, (2) as directly killing an innocent person is murder, and murder is always and absolutely impermissible, an abortion may not be performed. Or, (3) as one's duty to refrain from directly killing an innocent person is more stringent than one's duty to keep a person from dying, an abortion may not be performed. Or, (4) if one's only options are directly killing an innocent person or letting a person die, one must prefer letting the person die, and thus an abortion may not be performed.

Some people seem to have thought that these are not further premises which must be added if the conclusion is to be reached, but that they follow from the very fact that an innocent person has a right to life. But this seems to me to be a mistake, and perhaps the simplest way to show this is to bring out that while we must certainly grant that innocent persons have a right to life, the theses in (1) through (4) are all false. Take (2),

for example. If directly killing an innocent person is murder, and thus is impermissible, then the mother's directly killing the innocent person inside her is murder, and thus is impermissible. But it cannot seriously be thought to be murder if the mother performs an abortion on herself to save her life. It cannot seriously be said that she must refrain, that she must sit passively by and wait for her death. Let us look again at the case of you and the violinist There you are, in bed with the violinist, and the director of the hospital says to you, "It's all most distressing, and I deeply sympathize, but you see this is putting an additional strain on your kidneys, and you'll be dead within the month. But you have to stay where you are all the same. because unplugging you would be directly killing an innocent violinist, and that's murder, and that's impermissible." If anything in the world is true, it is that you do not commit murder, you do not do what is impermissible, if you reach around to your back and unplug yourself from that violinist to save your life.

The main focus of attention in writings on abortion has been on what a third party may or may not do in answer to a request from a woman for an abortion. This is in a way understandable. Things being as they are, there isn't much a woman can safely do to abort herself. So the question asked is what a third party may do, and what the mother may do, if it is mentioned at all, if deduced, almost as an afterthought, from what it is concluded that third parties may do. But it seems to me that to treat the matter in this way is to refuse to grant to the mother that very status of person which is so firmly insisted on for the fetus. For we cannot simply read off what a person may do from what a third party may do. Suppose you filed yourself trapped in a tiny house with a growing child. I mean a very tiny house, and a rapidly growing child—you are already up against the wall of the house and in a few minutes you'll be crushed to death. The child on the other hand won't be crushed to death; if nothing is done to stop him from growing he'll be hurt, but in the end he'll simply burst open the house and walk out a free man. Now I could well understand it if a bystander were to say. "There's nothing we can do for you. We cannot choose between your life and his, we cannot be the ones to decide who is to live, we cannot intervene." But it cannot be concluded that you too can do nothing, that you cannot attack it to save your life. However innocent the child may be, you do not have to wait passively while it crushes you to death Perhaps a pregnant woman is vaguely felt to have the status of house, to which we don't allow the right of self-defense. But if the woman houses the child, it should be remembered that she is a person who houses it.

I should perhaps stop to say explicitly that I am not claiming that people have a right to do anything whatever to save their lives. I think, rather, that there are drastic limits to the right of self-defense. If someone threatens you with death unless you torture someone else to death, I think you have not the right, even to save your life, to do so. But the case under consideration here is very different. In our case there are only two people involved, one whose life is threatened, and one who threatens it. Both are innocent: the one who is threatened is not threatened because of any fault, the one who threatens does not threaten because of any fault. For this reason we may feel that we bystanders cannot interfere. But the person threatened can.

In sum, a woman surely can defend her life against the threat to it posed by the unborn child, even if doing so involves its death. And this shows not merely that the theses in (1) through (4) are false; it shows also that the extreme view of abortion is false, and so we need not canvass any other possible ways of arriving at it from the argument I mentioned at the outset.

2.

The extreme view could of course be weakened to say that while abortion is permissible to save the mother's life, it may not be performed by a third party, but only by the mother herself. But this cannot be right either. For what we have to keep in mind is that the mother and the unborn child are not like two tenants in a small house which has, by an unfortunate mistake, been rented to both: the mother owns the house. The fact that she does adds to the offensiveness of deducing that the mother can do nothing from the supposition that third parties can do nothing. But it does more than this: it casts a bright light on the supposition that third parties can do nothing. Certainly it lets us see that a third party who says "I cannot choose between you" is fooling himself if he thinks this is impartiality. If Jones has found and fastened on a certain coat, which he needs to keep him from freezing, but which Smith also needs to keep him from freezing, then it is not impartiality that says "I cannot choose between you" when Smith owns the coat. Women have said again and again "This body is my body!" and they have reason to feel angry, reason to feel that it has been like shouting into the wind. Smith, after all, is hardly likely to bless us if we say to him, "Of course it's your coat, anybody would grant that it is. But no one may choose between you and Jones who is to have it."

We should really ask what it is that says "no one may choose" in the face of the fact that the body that houses the child is the mother's body. It may

be simply a failure to appreciate this fact. But it may be something more interesting, namely the sense that one has a right to refuse to lay hands on people, even where it would be just and fair to do so, even where justice seems to require that somebody do so. Thus justice might call for somebody to get Smith's coat back from Jones, and yet you have a right to refuse to be the one to lay hands on Jones, a right to refuse to do physical violence to him. This, I think, must be granted. But then what should be said is not "no one may choose," but only "I cannot choose," and indeed not even this, but "I will not act," leaving it open that somebody else can or should, and in particular that anyone in a position of authority, with the job of securing people's rights, both can and should. So this is no difficulty. I have not been arguing that any given third party must accede to the mother's request that he perform an abortion to save her life, but only that he may.

I suppose that in some views of human life the mother's body is only on loan to her, the loan not being one which gives her any prior claim to it. One who held this view might well think it impartiality to say "I cannot choose." But I shall simply ignore this possibility. My own view is that if a human being has any just, prior claim to anything at all, he has a just, prior claim to his own body. And perhaps this needn't be argued for here anyway, since, as I mentioned, the arguments against abortion we are looking at do grant that the woman has a right to decide what happens in and to her body. But although they do grant it, I have tried to show that they do not take seriously what is done in granting it. I suggest the same thing will reappear even more clearly when we turn away from cases in which the mother's life is at stake, and attend, as I propose we now do, to the vastly more common cases in which a woman wants an abortion for some less weighty reason than preserving her own life.

3.

Where the mother s life is not at stake, the argument I mentioned at the outset seems to have a much stronger pull. "Everyone has a right to life, so the unborn person has a right to life." And isn't the child's right to life weightier than anything other than the mother's own right to life, which she might put forward as ground for an abortion?

This argument treats the right to life as if it were unproblematic. It is not, and this seems to me to be precisely the source of the mistake.

For we should now, at long last, ask what it comes to, to have a right to life. In some views having a right to life includes having a right to be given at

least the bare minimum one needs for continued life. But suppose that what in fact IS the bare minimum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow. then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West coast and brought Henry Fonda back with them. But I have no right at all against anybody that he should do this for me. Or again, to return to the story I told earlier, the fact that for continued life the violinist needs the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. He certainly has no right against you that you should give him continued use of your kidneys. For nobody has any right to use your kidneys unless you give him this right—if you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due. Nor has he any right against anybody else that they should give him continued use of your kidneys. Certainly he had no right against the Society of Music Lovers that they should plug him into you in the first place. And if you now start to unplug yourself, having learned that you will otherwise have to spend nine years in bed with him, there is nobody in the world who must try to prevent you, in order to see to it that he is given some thing he has a right to be given.

Some people are rather stricter about the right to life. In their view, it does not include the right to be given anything, but amounts to, and only to, the right not to be killed by anybody. But here a related difficulty arises. If everybody is to refrain from killing that violinist, then everybody must refrain from doing a great many different sorts of things. Everybody must refrain from slitting his throat, everybody must refrain from shooting him—and everybody must refrain from unplugging you from him. But does he have a right against everybody that they shall refrain from unplugging you frolic him? To refrain from doing this is to allow him to continue to use your kidneys. It could be argued that he has a right against us that we should allow him to continue to use your kidneys. That is, while he had no right against us that we should give him the use of your kidneys, it might be argued that he anyway has a right against us that we shall not now intervene and deprive him Of the use of your kidneys. I shall come back to third-party interventions later. But certainly the violinist has no

right against you that you shall allow him to continue to use your kidneys. As I said, if you do allow him to use them, it is a kindness on your part, and not something you owe him.

The difficulty I point to here is not peculiar to the right of life. It reappears in connection with all the other natural rights, and it is something which an adequate account of rights must deal with. For present purposes it is enough just to draw attention to it. But I would stress that I am not arguing that people do not have a right to life—quite to the contrary, it seems to me that the primary control we must place on the acceptability of an account of rights is that it should turn out in that account to be a truth that all persons have a right to life. I am arguing only that having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body—even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would.

4.

There is another way to bring out the difficulty. In the most ordinary sort of case, to deprive someone of what he has a right to is to treat him unjustly. Suppose a boy and his small brother are jointly given a box of chocolates for Christmas. If the older boy takes the box and refuses to give his brother any of the chocolates, he is unjust to him, for the brother has been given a right to half of them. But suppose that, having learned that otherwise it means nine years in bed with that violinist, you unplug yourself from him. You surely are not being unjust to him, for you gave him no right to use your kidneys, and no one else can have given him any such right. But we have to notice that in unplugging yourself, you are killing him; and violinists, like everybody else, have a right to life, and thus in the view we were considering just now, the right not to be killed. So here you do what he supposedly has a right you shall not do, but you do not act unjustly to him in doing it.

The emendation which may be made at this point is this: the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly. This runs a risk of circularity, but never mind: it would enable us to square the fact that the violinist has a right to life with the fact that you do not act unjustly toward him in unplugging yourself, thereby killing him. For if you do not kill him unjustly, you do not violate his right to life, and so it is no wonder you do him no injustice.

But if this emendation is accepted, the gap in the argument against abortion stares us plainly in the face: it is by no means enough to show that the fetus is a person, and to remind us that all persons have a right to life—we need to be shown also that killing the fetus violates its right to life, i.e., that abortion is unjust killing. And is it?

I suppose we may take it as a datum that in a case of pregnancy due to rape the mother has not given the unborn person a right to the use of her body for food and shelter. Indeed, in what pregnancy could it be supposed that the mother has given the unborn person such a right? It is not as if there are unborn persons drifting about the world, to whom a woman who wants a child says I invite you in."

But it might be argued that there are other ways one can have acquired a right to the use of another person's body than by having been invited to use it by that person. Suppose a woman voluntarily indulges in intercourse, knowing of the chance it will issue in pregnancy, and then she does become pregnant; is she not in part responsible for the presence, in fact the very existence, of the unborn person inside? No doubt she did not invite it in. But doesn't her partial responsibility for its being there itself give it a right to the use of her body? If so, then her aborting it would be more like the boys taking away the chocolates, and less like your unplugging yourself from the violinist—doing so would be depriving it of what it does have a right to, and thus would be doing it an injustice.

And then, too, it might be asked whether or not she can kill it even to save her own life: If she voluntarily called it into existence, how can she now kill it, even in self-defense?

The first thing to be said about this is that it is something new. Opponents of abortion have been so concerned to make out the independence of the fetus, in order to establish that it has a right to life, just as its mother does, that they have tended to overlook the possible support they might gain from making out that the fetus is dependent on the mother, in order to establish that she has a special kind of responsibility for it, a responsibility that gives it rights against her which are not possessed by any independent person—such as an ailing violinist who is a stranger to her.

On the other hand, this argument would give the unborn person a right to its mother's body only if her pregnancy resulted from a voluntary act, undertaken in full knowledge of the chance a pregnancy might result from it. It would leave out entirely the unborn person whose existence is

due to rape. Pending the availability of some further argument, then, we would be left with the conclusion that unborn persons whose existence is due to rape have no right to the use of their mothers' bodies, and thus that aborting them is not depriving them of anything they have ~ right to and hence is not unjust killing.

And we should also notice that it is not at all plain that this argument really does go even as far as it purports to. For there are cases and cases, and the details make a difference. If the room is stuffy, and I therefore open a window to air it, and a burglar climbs in, it would be absurd to say, "Ah, now he can stay, she's given him a right to the use of her house—for she is partially responsible for his presence there, having voluntarily done what enabled him to get in, in full knowledge that there are such things as burglars, and that burglars burgle." It would be still more absurd to say this if I had had bars installed outside my windows, precisely to prevent burglars from getting in, and a burglar got in only because of a defect in the bars. It remains equally absurd if we imagine it is not a burglar who climbs in, but an innocent person who blunders or falls in. Again, suppose it were like this: people-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don't want children, so you fix up your windows with fine mesh screens, the very best you can buy. As can happen, however, and on very, very rare occasions does happen, one of the screens is defective, and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house? Surely not—despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective. Someone may argue that you are responsible for its rooting, that it does have a right to your house, because after all you could have lived out your life with bare floors and furniture, or with sealed windows and doors. But this won't do—for by the same token anyone can avoid a pregnancy due to rape by having a hysterectomy, or anyway by never leaving home without a (reliable!) army.

It seems to me that the argument we are looking at can establish at most that there are some cases in which the unborn person has a right to the use of its mother's body, and therefore some cases in which abortion is unjust killing. There is room for much discussion and argument as to precisely which, if any. But I think we should sidestep this issue and leave it open, for at any rate the argument certainly does not establish that all abortion is unjust killing.

5.

There is room for yet another argument here, however. We surely must all grant that there may be cases in which it would be morally indecent to detach a person from your body at the cost of his life. Suppose you learn that what the violinist needs is not nine years of your life, but only one hour: all you need do to save his life is to spend one hour in that bed with him. Suppose also that letting him use your kidneys for that one hour would not affect your health in the slightest. Admittedly you were kidnapped. Admittedly you did not give anyone permission to plug him into you. Nevertheless it seems to me plain you ought to allow him to use your kidneys for that hour—it would be indecent to refuse.

Again, suppose pregnancy lasted only an hour, and constituted no threat to life or health. And suppose that a woman becomes pregnant as a result of rape. Admittedly she did not voluntarily do anything to bring about the existence of a child. Admittedly she did nothing at all which would give the unborn person a right to the use of her body. All the same it might well be said, as in the newly amended violinist story, that she ought to allow it to remain for that hour—that it would be indecent of her to refuse.

Now some people are inclined to use the term "right" in such a way that it follows from the fact that you ought to allow a person to use your body for the hour he needs, that he has a right to use your body for the hour he needs, even though he has not been given that right by any person or act. They may say that it follows also that if you refuse, you act unjustly toward him. This use of the term is perhaps so common that it cannot be called wrong; nevertheless it seems to me to be an unfortunate loosening of what we would do better to keep a tight rein on. Suppose that box of chocolates I mentioned earlier had not been given to both boys jointly, but was given only to the older boy. There he sits stolidly eating his way through the box. his small brother watching enviously. Here we are likely to say, "You ought not to be so mean. You ought to give your brother some of those chocolates." My own view is that it just does not follow from the truth of this that the brother has any right to any of the chocolates. If the boy refuses to give his brother any he is greedy stingy. callous—but not unjust. I suppose that the people I have in mind will say it does follow that the brother has a right to some of the chocolates, and thus that the boy does act unjustly if he refuses to give his brother any. But the effect of saying, this is to obscure what we should keep distinct, namely the difference between the boy's refusal in this case and the boy's refusal in the earlier case, in which

the box was given to both boys jointly, and in which the small brother thus had what was from any point of view clear title to half.

A further objection to so using the term "right" that from the fact that A ought to do a thing for B it follows that R has a right against A that A do it for him, is that it is going to make the question of whether or not a man has a right to a thing turn on how easy it is to provide him with it; and this seems not merely unfortunate, but morally unacceptable. Take the case of Henry Fonda again. I said earlier that I had no right to the touch of his cool hand on my fevered brow even though I needed it to save my life. I said it would be frightfully nice of him to fly in from the West Coast to provide me with it, but that I had no right against him that he should do so. But suppose he isn't on the West Coast. Suppose he has only to walk across the room, place a hand briefly on my brow—and lo, my life is saved. Then surely he ought to do it-it would be indecent to refuse. Is it to be said, "Ah, well, it follows that in this case she has a right to the touch of his hand on her brow, and so it would be an injustice in him to refuse"? So that I have a right to it when it is easy for him to provide it, though no right when it's hard? It's rather a shocking idea that anyone's rights should fade away and disappear as it gets harder and harder to accord them to him.

The social problem. A young pregnant woman unhappy with the test that she wants to have an abortion.
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So my own view is that even though you ought to let the violinist use your kidneys for the one hour he needs, we should not conclude that he has a right to do so—we should say that if you refuse, you are, like the boy who owns all the chocolates and will give none away, self-centered and callous, indecent in fact, but not unjust. And similarly, that even supposing a case in which a woman pregnant due to rape ought to allow the unborn person to use her body for the hour he needs, we should not conclude that he has a right to do so; we should say that she is self-centered, callous, indecent, but not unjust, if she refuses. The complaints are no less grave; they are just different. However, there is no need to insist on this point. If anyone does wish to deduce "he has a right" from "you ought," then all the same he must surely grant that there are cases in which it

is not morally required of you that you allow that violinist to use your kidneys, and in which he does not have a right to use them, and in which you do not do him an injustice if you refuse. And so also for mother and unborn child. Except in such cases as the unborn person has a right to demand it—and we were leaving open the possibility that there may be such cases—nobody is morally required to make large sacrifices, of health, of all other interests and concerns, of all other duties and commitments, for nine years, or even for nine months, in order to keep another person alive.

6.

We have in fact to distinguish between two kinds of Samaritan: the Good Samaritan and what we might call the Minimally Decent Samaritan. The story of the Good Samaritan, you will remember, goes like this:

> A certain man went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead.
>
> And by chance there came down a certain priest that way: and when he saw him, he passed by on the other side.
>
> And likewise a Levite, when he was at the place, came and looked on him, and passed by on the other side.
>
> But a certain Samaritan, as he journeyed, came where he was, and when he saw him he had compassion on him.
>
> And went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him.
>
> And on the morrow, when he departed, he took out two pence, and gave them to the host, and said unto him, "Take care of him; and whatsoever thou spendest more, when I come again, I will repay thee." (Luke 10:30-35)

The Good Samaritan went out of his way, at some cost to himself, to help one in need of it. We are not told what the options were, that is, whether or not the priest and the Levite could have helped by doing less than the Good Samaritan did, but assuming they could have, then the fact they did nothing at all shows they were not even Minimally Decent Samaritans, not because they were not Samaritans, but because they were not even minimally decent.

These things are a matter of degree, of course, but there is a difference, and it comes out perhaps most clearly in the story of Kitty Genovese, who, as you will remember, was murdered while thirty-eight people watched or listened, and did nothing at all to help her. A Good Samaritan would have rushed out to give direct assistance against the murderer. Or perhaps we had better allow that it would have been a Splendid Samaritan who did this, on the ground that it would have involved a risk of death for himself. But the thirty-eight not only did not do this, they did not even trouble to pick up a phone to call the police. Minimally Decent Samaritanism would call for doing at least that, and their not having done it was monstrous.

After telling the story of the Good Samaritan, Jesus said, "Go, and do thou likewise." Perhaps he meant that we are morally required to act as the Good Samaritan did. Perhaps he was urging people to do more than is morally required of them. At all events it seems plain that it was not morally required of any of the thirty-eight that he rush out to give direct assistance at the risk of his own life, and that it is not morally required of anyone that he give long stretches of his life—nine years or nine months—to sustaining the life of a person who has no special right (we were leaving open the possibility of this) to demand it.

Indeed, with one rather striking class of exceptions, no one in any country in the world is legally required to do anywhere near as much as this for anyone else. The class of exceptions is obvious. My main concern here is not the state of the law in respect to abortion, but it is worth drawing attention to the fact that in no state in this country is any man compelled by law to be even a Minimally Recent Samaritan to any person; there is no law under which charges could be brought against the thirty eight who stood by while Kitty Genovese died. By contrast, in most states in this country women are compelled by law to be not merely Minimally Decent Samaritans, but Good Samaritans to unborn persons inside them. This doesn't by itself settle anything one way or the other, because it may well be argued that there should be laws in this country as there are in many European countries—compelling at least Minimally Decent Samaritanism. But it does show that there is a gross injustice in the existing state of the law. And it shows also that the groups currently working against liberalization of abortion laws, in fact working toward having it declared unconstitutional for a state to permit abortion, had better start working for the adoption

of Good Samaritan laws generally, or earn the charge that they are acting in bad faith.

I should think, myself, that Minimally Decent Samaritan laws would be one thing, Good Samaritan laws quite another, and in fact highly improper. But we are not here concerned with the law. What we should ask is not whether anybody should be compelled by law to be a Good Samaritan, but whether we must accede to a situation in which somebody is being compelled—by nature, perhaps—to be a Good Samaritan. We have, in other words, to look now at third-party interventions. I have been arguing that no person is morally required to make large sacrifices to sustain the life of another who has no right to demand them, and this even where the sacrifices do not include life itself; we are not morally required to be Good Samaritans or anyway Very Good Samaritans to one another. But what if a man cannot extricate himself from such a situation? What if he appeals to us to extricate him? It seems to me plain that there are cases in which we can, cases in which a Good Samaritan would extricate him. There you are, you were kidnapped, and nine years in bed with that violinist lie ahead of you. You have your own life to lead. You are sorry, but you simply cannot see giving up so much of your life to the sustaining of his. You cannot extricate yourself, and ask us to do so. I should have thought that—in light of his having no right to the use of your body—it was obvious that we do not have to accede to your being forced to give up so much. We can do what you ask. There is no injustice to the violinist in our doing so.

7.

Following the lead of the opponents of abortion, I have throughout been speaking of the fetus merely as a person, and what I have been asking is whether or not the argument we began with, which proceeds only from the fetus's being a person, really does establish its conclusion. I have argued that it does not.

But of course there are arguments and arguments, and it may be said that I have simply fastened on the wrong one. It may be said that what is important is not merely the fact that the fetus is a person, but that it is a person for whom the woman has a special kind of responsibility issuing from the fact that she is its mother. And it might be argued that all my analogies are therefore irrelevant—for you do not have that special kind of responsibility for that violinist; Henry Fonda does not have that

special kind of responsibility for me. And our attention might be drawn to the fact that men and women both are compelled by law to provide support for their children I have in effect dealt (briefly) with this argument in section 4 above; but a (still briefer) recapitulation now may be in order. Surely we do not have any such "special responsibility" for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it. But if they have taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it. They may wish to assume responsibility for it, or they may not wish to. And I am suggesting that if assuming responsibility for it would require large sacrifices, then they may refuse. A Good Samaritan would not refuse—or anyway, a Splendid Samaritan, if the sacrifices that had to be made were enormous. But then so would a Good Samaritan assume responsibility for that violinist; so would Henry Fonda, if he is a Good Samaritan, fly in from the West Coast and assume responsibility for me.

8.

My argument will be found unsatisfactory on two counts by many of those who want to regard abortion as morally permissible. First, while I do argue that abortion is not impermissible, I do not argue that it is always permissible. There may well be cases in which carrying the child to term requires only Minimally Decent Samaritanism of the mother, and this is a standard we must not fall below. I am inclined to think it a merit of my account precisely that it does not give a general yes or a general no. It allows for and supports our sense that, for example, a sick and desperately frightened fourteen-year-old schoolgirl, pregnant due to rape, may of course choose abortion, and that any law which rules this out is an insane law. And it also allows for and supports our sense that in other cases resort to abortion is even positively indecent. It would be indecent in the woman to request an

abortion, and indecent in a doctor to perform it, if she is in her seventh month, and wants the abortion just to avoid the nuisance of postponing a trip abroad. The very fact that the arguments I have been drawing attention to treat all cases of abortion, or even all cases of abortion in which the mother's life is not at stake, as morally on a par ought to have made them suspect at the outset.

Second, while I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point in the life of the fetus it is not able to survive outside the mother's body; hence removing it from her body guarantees its death. But they are importantly different. I have argued that you are not morally required to spend nine months in bed, sustaining the life of that violinist, but to say this is by no means to say that if, when you unplug yourself, there is a miracle and he survives, you then have a right to turn round and slit his throat. You may detach yourself even if this costs him his life; you have no right to be guaranteed his death, by some other means, if unplugging yourself does not kill him. There are some people who will feel dissatisfied by this feature of my argument. A woman may be utterly devastated by the thought of a child, a bit of herself, put out for adoption and never seen or heard of again. She may therefore want not merely that the child be detached from her, but more, that it die. Some opponents of abortion are inclined to regard this as beneath contempt—thereby showing insensitivity to what is surely a powerful source of despair. All the same, I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive.

At this place, however, it should be remembered that we have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person, and so is not dealt with by anything I have said here.

READINGS: NATIONAL ORGANIZATION FOR WOMEN: BILL OF RIGHTS (ADOPTED AT THE 1967 NATIONAL CONFERENCE)

NEW YORK CITY–JULY 11 2015: a ticker tape parade was held for the champion US women's FIFA team along Canyon of Heroes on Broadway. National Organization for Women signs.

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In this historic 1968 manifesto, the National Organization for Women (NOW) sets forth a list of demands for women's rights, many of which ought to be granted under the authority of both the 1964 Civil Rights Act and the U.S. Constitution's guarantee of equal protection under the law. Regrettably, many of these demands remain unmet. The Equal Rights Amendment was never ratified. According to the 2012 U.S. Census Bureau, women working full time earned an average of 77 cents for every dollar men earned. A proposed Paycheck Fairness Act was blocked by U.S. Senate Republicans on April 8, 2014.

QUICK LOOK: WOMEN BILL OF RIGHTS

I. Equal Rights Constitutional Amendment
II. Enforce Law Banning Sex Discrimination in Employment
III. Maternity Leave Rights in Employment and in Social Security Benefits
IV. Tax Deduction for Home and Child Care Expenses for Working Parents
V. Child Day Care Centers
VI. Equal and Unsegregated Education
VII. Equal Job Training Opportunities and Allowances for Women in Poverty
VIII. The Right of Women to Control their Reproductive Lives

National Organization for Women Bill of Rights (1967), reprinted with permission. This is a historical document and may not reflect the current language or priorities of the organization.

We Demand:

I. That the United States Congress immediately pass the Equal Rights Amendment to the Constitution to provide that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex" and that such then be immediately ratified by the several States.

II. That equal employment opportunity be guaranteed to all women, as well as men by insisting that the Equal Employment Opportunity Commission enforce the prohibitions against sex discrimination in employment under Title VII of the Civil Rights Act of 1964 with the same vigor as it enforces the prohibitions against racial discrimination.

III. That women be protected by law to insure their rights to return to their jobs within a reasonable time after childbirth without loss of seniority or other accrued benefits and be paid maternity leave as a form of social security and/or employee benefit.

IV. Immediate revision of tax laws to permit the deduction of home and child care expenses for working parents.

V. That child care facilities be established by law on the same basis as parks, libraries and public schools adequate to the needs of children, from the pre-school years through adolescence, as a community resource to be used by all citizens from all income levels.

VI. That the right of women to be educated to their full potential equally with men be secured by Federal and State legislation, eliminating all discrimination and segregation by sex, written and unwritten, at all levels of education including college, graduate and professional schools, loans and fellowships and Federal and State training programs, such as the job Corps.

VII. The right of women in poverty to secure job training, housing and family allowances on equal terms with men, but without prejudice to a parent's right to remain at home to care for his or her children; revision of welfare legislation and poverty programs which deny women dignity, privacy and self-respect.

VIII. The right of women to control their own reproductive lives by removing from penal codes the laws limiting access to contraceptive information and devices and laws governing abortion.

Equal Pay for Equal Work, Just Not Yet

The Paycheck Fairness Act was defeated in the U.S. Senate in 2014. This law, had it passed, would have made it illegal for employers to penalize employees who discuss their salaries—thus making these salaries public—and also would have required the Equal Employment Opportunity Commission to collect this salary information from employers.

Women still make an average of 77 cents for every dollar a man makes in the United States; the gap is wider for minority women. Is it an invasion of an employer's privacy to require the employer to release salary information, or is it a morally justified way to guarantee treatment for women?

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